IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 689 of 2002

to

CIVIL REVISION APPLICATION No 812 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT HOUSING BOARD

Versus

A A SHAIKH

Appearance:

MR SB PANDIT and Mr. Shailesh C. Parikh

for Petitioners.

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 27/09/2002

ORAL JUDGEMENT

The present Civil Revision Applications are filed against the order passed by the ld. Joint District Judge, Vadodara in Misc. Civil Application No. 130 of

2001 to Misc. Civil Application No. 253 of 2001 condoning the delay of 26 days in filing appeals under Section 9 of the Gujarat Public Premises (Eviction of Unauthorised Occupants Act, 1972 (hereinafter referred to as "the Act".)

2. The brief facts of the present case are narrated in detail in the memo of the Civil Revision Applications. It is the case of the petitioner Gujarat Housing Board that the respondents have not paid their installments regularly and contrary to the terms and conditions of the agreements they have parted with the possession and hence notices were issued on the respondents on 20th April 2001 and thereafter eviction order was passed on 10.5.2001. As per the provisions contained in Section 9 of the Act, an appeal is required to be filed within a period of 15 days and if the appeal is filed late, in that case a separate delay condonation application is required to be filed, in view of the provisions contained in the Order 41 Rule 3-A of the Civil Procedure Code. However, in the instant case as averred in the petition, the appeal was filed late by 26 days and no delay condonation application was filed. The grounds urged for condonation of delay are also very vague and it cannot be termed as the sufficient grounds for condonation of delay. Inspite of all these facts,the learned Joint District Judge, Vadodara on 11.9.2001 condoning the delay of 26 days and registered the appeal after treating the appeal memo as an application for condonation of delay and directing the present respondents to file fresh set of appeal memos.

3. Being aggrieved by the aforesaid order, the petitioner has filed all these 123 revision applications before this Court. Heard Mr. Shailesh C. Parikh along with Mr. Sharad Pandit, ld. advocates appearing for the petitioners. They have reiterated all the submissions which were made in the memo of the Civil Revision Applications and they have also relied on the following authorities;

1. Banarsidas and others v. State of Uttar Pradesh and others - AIR 1956 (SC) 520.

2. Mahant Gurmukh Singh v. The State of Punjab and Others - AIR 1970 Punjab & Haryana 282.

3. Badrinath v. Hari Bhagar = AIR 1971 Jammu And Kashmir 41.

4. Nanda and others v. Lachhman and others =

AIR 1982 Madhya Pradesh 8.

On the basis of these authorities, it was urged that the main grounds canvassed by the respondents for condonation of delay are not sufficient grounds as collection of fees from the members or collection of papers and documents for the purpose of filing appeals or the respondents are illiterate and/or poor were never held to be sufficient grounds for the purpose of condonation of delay.

4. I have gone through the facts of the present case. I have also considered the impugned order passed by the learned District Judge, Vadodara. I have also carefully considered the authorities relied on by the ld. advocates appearing for the petitioner. I am of the view that the learned District Judge has considered all the decisions cited above and elaborately discussed the entire aspect of the matter in his judgment. As far as the requirement of application for condonation of delay is concerned, the learned Judge has referred to and relied on the decision of this Court in Narayan Annappa

Shetty vs. Jayantilal, reported in 1986(1) GLR 206, wherein it is held that the provision of Sub-Rule 3-A of Order 41 of the Code of Civil Procedure is a directory and not mandatory and therefore the strict compliance of the above rule that an application for condonation of delay should be given separately, is not required. As far as the issues regarding merits of the matter are concerned, the learned Judge has categorically observed that it was an application for condonation of delay and therefore the grounds pertaining to the merits were not required to be mentioned in the judgment in detail. For condonation of delay; the present respondents had come out with a case that they were poor and having lack of legal knowledge and proper education and therefore they were not knowing about the passing of impugned order on 10.5.2001 under which the eviction orders have been passed for the premises occupied by them. It was further stated by them that once having come to know about the eviction orders they approached the President of Nirmal Park Association, the other allottees also approached him for the same purpose, and all were asked by him to give their files of the house and they were told that he would do the needful. It was further stated that all the allottees being very poor and also illiterate they could not trace out the relevant papers of their premises till 4th June 2001. It was further stated that they could not collect the papers and only half of the allottees could collect and gather to approach their lawyer and due to all these reasons, they could not file the appeals within

the period of limitation of 15 days but appeals were filed late by 26 days and so they have prayed for the condonation of delay.

5. On the basis of these facts, the learned Joint District Judge has come to the conclusion that looking to the number of days sought to be condoned, it appeared that this was a very small period and the applicants had remained in inaction and silent and therefore there was no gross negligence on the part of the applicants in causing delay. It was further held by the ld. Joint District Judge that it appeared from the averments of the applications which were supported by the affidavit that they had tried to oppose the orders of eviction by filing the appeal collectively and they were not in a position to make arrangements for the fees for the appeal immediately. Since there were several grounds canvassed, one has to see the cumulative effect of all these grounds and on the basis of these grounds ultimately if the learned Judge has come to the conclusion that there was sufficient cause for condonation of delay, this Court while exercising revisional jurisdiction under Section 115 of the Civil Procedure Code would not like to interfere simply on the ground that another view could have been taken by the learned District Judge. The scope of revision is very limited and on the basis of the facts and circumstances and after having considered and applied the authorities to the facts of the case by the learned Joint District Judge, it cannot be said that he has committed any jurisdictional error while passing the impugned order and condoning the delay of 26 days in filing the appeals. I, therefore, do not see any justification to interfere in the impugned order and reject all these Civil Revision Applications.

6. However on a request being made by the learned advocates appearing for the petitioners and looking to the issue involved in the present Civil Revision Applications, I direct the learned Joint District Judge, Vadodara, to dispose of all these appeals as expeditiously as possible preferably within the period of three months from the date of receipt of writ from this Court or from the date of receipt of certified copy of this order whichever is earlier. While taking up the appeals for final disposal if the learned Joint District Judge is of the view that some amount is required to be deposited by the present respondents, it would be open for him to pass such order for deposit of some amount as a condition precedent for deciding the appeals.

7. With the above observations, all these Civil

Revision Applications are disposed of as having been rejected.

rmr. [K.A. Puj, J.]